

December 2006

Proposed NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula

QUESTIONS AND ANSWERS

1. What is the Clean Water Act (CWA) Section 106 Program?

Section 106 of the CWA authorizes EPA to provide grants to State and Interstate agencies to administer programs for the prevention, reduction, and elimination of water pollution, including the development and implementation of groundwater protection strategies. Section 106(b) of the CWA directs the EPA Administrator to make allotments “in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.”

EPA’s regulations implementing Section 106 can be found at 40 C.F.R. 35.160 et seq. EPA’s current allotment formula for Section 106 grants establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. These six components are: surface water area; ground water use; water quality impairment; potential point sources; nonpoint sources; and the population of urbanized areas (40 C.F.R. §35.162 (b)(1)(i)). By including a component related to point sources, EPA recognizes the important role they play in determining the extent of pollution in a State.

2. What is the NPDES Program?

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the CWA, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The CWA generally requires that all discharges of pollutants from a point source into waters of the United States obtain a permit under the NPDES program. NPDES permits establish pollutant discharge limits based on treatment technology performance, the quality of the water into which pollutants are discharged, and the potential impact of the discharge on public health and the environment. EPA oversees the NPDES program and also approves applications from States to administer and enforce the NPDES program in that State. In most cases, the NPDES permit program is administered by authorized States.

3. How are State NPDES Permit Programs Funded?

State permit programs are funded with a mixture of State and federal dollars, including grants awarded under CWA Section 106. The growing complexity of water quality issues and the growing resource needs associated with addressing these issues have prompted more States to implement fee programs for the issuance of permits under the NPDES program. However, a number of States still operate their permit programs with little or no reliance on permit fees.

4. *What is the Purpose of the Proposed NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants?*

The Proposed *NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants* is intended to provide a financial incentive to States to utilize an adequate fee program when implementing an authorized NPDES permit program.

5. *What is the size of the permit fee allotment incentive pool that EPA is proposing with this rulemaking?*

The size of the incentive is 3 percent of the FY 2006 total state allotment. The total state allotment is approximately \$169.3 million. Three percent of \$169.3 is \$5.1 million.

6. *Why is EPA Issuing the Proposed Rulemaking and When is it Effective?*

EPA is committed to finding effective and efficient solutions to maintaining sustainable State water pollution control programs that continue to ensure that the nation's waters are clean and protected. This rulemaking is designed to provide an incentive to States to move toward greater sustainability in the way they manage and budget for environmental programs and to shift part of the financial burden to those who benefit from NPDES permits. Funding NPDES permit programs with the support of permit fees will allow States to use CWA Section 106 funds for other critical water quality programmatic activities. This rule will not be effective prior to fiscal year 2008.

7. *What is Covered by the Notice of Proposed Rulemaking?*

The proposed rule provides the background and reasoning for EPA's decision to create financial incentives for States to implement adequate NPDES fee programs. The rulemaking also outlines the proposed changes to the CWA Section 106 grant allotment formula. The proposed rulemaking also summarizes the eligibility criteria for the incentive, as well as the incentive application process, including the reporting requirements.

8. *Who is Affected by the Guidance?*

The proposed rulemaking will affect State Agencies that are eligible to receive grants under CWA Section 106. By extension, the rule also may impact entities who request permits under the NPDES program.

9. *Must a State establish or expand its permit fee program?*

No, it is not mandatory for any State to apply for the funds, nor is EPA requiring States to change their permit fee structures as a condition of base water quality program grant funding. However, in order to encourage more sustainable water quality programs, the incentive funds only will be available to those States that meet the conditions outlined in the proposed rule. States may use the incentive funds to support all eligible water quality activities permitted under the grant.

10. *How will funding for core water quality programs be impacted?*

Over time, State funding for core water quality programs from Section 106 funds will not be greatly impacted by the rule. Each State will continue to receive the same level of funding they received in FY 2006, a total of \$169 million. If there are State grant allotment increases in future years, the first \$5.1 million of the increases will be used to fund the incentive program and the remainder will be distributed to the States.

11. *How will Future State Allotment Increases or Cuts be Impacted by the Incentive Fund?*

The size of the incentive is capped at \$5.1 million, regardless of the amount of future increases. Once the incentive fund is fully funded, it will not have an impact on any subsequent increases to the State allotment. If funding for the Section 106 program falls below the FY 2006 level, no funds will be made available for the incentive programs; so the proposed rule maintains current base program funding levels.

12. *Who is Eligible for the Incentive?*

Eligibility for this set-aside is limited to only those States authorized by EPA to implement the NPDES program by the first day of the fiscal year (October 1) for which funds are appropriated by Congress. These States must also submit annually, by October 1, a certification to EPA that meets two additional requirements. First, the certification must include the total percentage of NPDES program costs recovered by the State through permit fee collections during the most recently completed State fiscal year, and a statement that the amount of permit fees collected is used by the State to defray NPDES program costs. This proposal defines NPDES program costs as all activities relating to permitting, enforcement, and compliance. Second, the certification must include a statement that State recurrent expenditures for water quality programs have not decreased from the previous State fiscal year, or indicate that a decrease in such expenditures is attributable to a non-selective reduction of the programs of all executive branch agencies of the State government.

13. *How Will the Incentive be Allocated?*

After EPA determines the number of eligible States, each State will be eligible to receive up to a full share of the set-aside amount (capped at 50 percent of the State's Section 106 allotment in the previous fiscal year). EPA will determine the amount of a full share by dividing the set-aside amount by the number of eligible States. A full share will be the same amount for each eligible State. The percent of a full share that each eligible State will receive, however, will be determined by the following formula, based on the certification information described above.

- (A) A State will receive 25 percent of a full share if that State has collected permit fees that equal or exceed 75 percent of total State NPDES program costs; or
- (B) A State will receive 50 percent of a full share if that State has collected permit fees that equal

- or exceed 90 percent of total NPDES program costs; or
- (C) A State will receive a full share if that State has collected permit fees that equal 100 percent of total NPDES program costs.

Ultimately, in its certification, a State must inform EPA of its total NPDES program costs and the percentage of which are recovered through permit fees. EPA will use the information from this certification to determine any additional amount a State would receive in its Section 106 grant based on this financial incentive allotment formula.

14. How Can I Obtain More Information?

For general information about the Section 106 Water Pollution Control Grant Program, please contact Lena Ferris in the Office of Wastewater Management at (202) 564-8831 or ferris.lena@epa.gov. Copies of the Notice of Proposed Rulemaking can be downloaded from EPA's Office of Wastewater Management web site at: www.epa.gov/owm/cwfinance/pollutioncontrol.htm.

Technical inquiries may also be addressed to Lena Ferris at the U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue, N.W., Mail Code 4201M, Washington, DC 20460, or by email at ferris.lena@epa.gov.